

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 14, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF: 07OD-186
Oahu

Enforcement of Violation of Unencumbered Public Lands for Unauthorized Commercial Activity by Nita Kalamafoni at Duke Kahanamoku Beach, Waikiki, Oahu, Tax Map Key (1) 2-3-037:021.

PURPOSE:

Enforcement of violation of unencumbered public lands for unauthorized commercial activity by Nita Kalamafoni at Duke Kahanamoku Beach, Waikiki, Oahu.

LEGAL REFERENCE:

1. Section §171-6, Hawaii Revised Statutes, as amended, which provides in pertinent part:

§171-6 Powers. Except as otherwise provided by law, the board of land and natural resources ... may:

(12) Bring such actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall be subject to a fine of not more than \$500 a day for the first offense and shall be liable for administrative costs incurred by the department and for payment of damages. Upon the second offense and thereafter, the violator shall (A) be fined not less than \$500 nor more than \$2,000 per day"

2. Sections §13-221-2, §13-221-3, and §13-221-35, Hawaii Administrative Rules (HAR):

HAR §13-221-2 defines "Commercial Activity" in pertinent part as "the use of or activity on state land for which compensation is received by any person for goods or services or both rendered to customers or participants in that use or activity. Display of merchandise or **demanding or requesting gifts, money, or services, except as allowed by chapter 13-7, shall be considered commercial activity.**" (Emphasis added)

HAR §13-221-3 Penalties. Any person violating this chapter for which a penalty is not otherwise provided shall be fined not more than \$500 per day and shall be liable for administrative costs and damages incurred by the department.

HAR §13-221-35 Commercial Activities. No person shall engage in commercial activities of any kind without a written permit from the board or its authorized representative.

LOCATION:

Portion of Government lands situated at Duke Kahanamoku Beach, Waikiki, Oahu, identified by tax map key: (1) 2-3-037:021, as shown on the attached map labeled Exhibit A.

BACKGROUND and DISCUSSION:

Staff received an investigation report, number 08-0866-0A, from a DOCARE officer alleging that unauthorized commercial activity was being conducted at Duke Kahanamoku Beach. In the investigator's report, the officer states:


"While wearing an oversize jacket over my duty shirt and my duty belt, I conducted foot patrol of Waikiki shore from Queen's to Duke Kahanamoku Beach. ... From 1900 to 1930, October 1, 2007, I observed Nita Kalamafoni at Duke Kahanamoku Beach near Hilton Hawaiian Hotel Restaurant/bar area [Staff notes location marked "X" on map attached as Exhibit A]. Numerous leis were in her arm giving her an appearance as if she was an official "lei greeter." She approached couples who were walking on the sidewalk and sandy area and greeted them by saying "Aloha" then she drapes a lei on them. She then solicits \$5 donation for each lei and majority of them complied. From 1900 to 1930, I observed the suspect drape 15 leis on tourist. ... At about 1900, I approached Kalamafoni and identified myself to her as a DLNR/DOCARE officer. I asked if she has a permit from DLNR Land Division to conduct COMMERCIAL ACTIVITIES in the unencumbered land and she replied "No". I informed her that she was in violation of COMMERCIAL ACTIVITIES, Hawaii Administrative Rules 13-221-35. She was informed that she would be notified by the Land Board for a scheduled hearing for the violation."

FINDINGS:

Staff research determined Nita Kalamafoni has no authority to conduct the above-mentioned activities. Staff finds that Nita Kalamafoni engaged in commercial activity without a permit on Duke Kahanamoku Beach in violation of HAR §13-221-35. HAR§13-221-3 authorizes a fine of not more than \$500 per day and administrative costs and damages incurred by the department. Staff is recommending that Nita Kalamafoni be fined \$500.00.

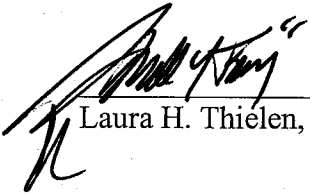
RECOMMENDATION: That the Board issue a fine in the amount of \$500.00 against Nita Kalamafoni.

Respectfully submitted,



Melvyn Ho, Land Agent

Approved for submittal:



Laura H. Thielen, Chairperson

